

SERVICE DATE – LATE RELEASE OCTOBER 26, 2016

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 763X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN LOGAN COUNTY, W.VA.

Decided: October 26, 2016

CSX Transportation, Inc. (CSXT) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 3.29-mile rail line on its Southern Region, Florence Division, Logan Subdivision, between milepost CLX 0.0 near Man and milepost CLX 3.29 near Garnette, in Logan County, W. Va. (the Line). Notice of the exemption was served and published in the Federal Register on September 27, 2016 (81 Fed. Reg. 66,322). The exemption is scheduled to become effective on October 27, 2016.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on September 30, 2016, recommending that one environmental condition be imposed on any decision granting abandonment authority. In the EA, OEA stated that CSXT served an historic report on the West Virginia Division of Culture and History (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c). OEA points out that the Line contains three CSXT-owned structures that are 50 years old or older that may be eligible for listing in the National Register of Historic Places (National Register). OEA stated that it had not heard from the SHPO and has been unable to consider the SHPO's opinion before determining if the Line may be eligible for listing in the National Register. OEA recommended that CSXT be required to retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, has been completed. OEA also recommended that CSXT be required to report back to OEA regarding any consultations with the SHPO and the public and be prohibited from filing its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

OEA received one new comment in response to the EA by the October 18, 2016 due date. OEA issued its final EA on October 18, 2016.

In the final EA, OEA states that on October 6, 2016, the Eastern Band of Cherokee Indians commented that the proposed abandonment would have no adverse impacts on cultural or historic resources, but requested that it be immediately notified if any unanticipated

archaeological sites, human remains, or Native American cultural items are discovered during the salvage process and for any post-abandonment development activities along the right-of-way. Accordingly, OEA recommends that the following new condition be imposed: in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, CSXT shall immediately cease all work and notify OEA and the SHPO, pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO, CSXT, the Eastern Band of Cherokee Indians, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

Consistent with OEA's recommendations, the environmental condition recommended in the EA and final EA, and the new condition recommended in the final EA, will be imposed.

Interim trail use. On October 7, 2016, the Georgetown and High Line Railway Company, LLC (GHL) filed a request for issuance of a notice of interim trail use (NITU) to negotiate with CSXT for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. GHL has also submitted a statement of willingness to assume full responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required under 49 C.F.R. § 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. In GHL's request, GHL states that it has the authority to state that CSXT concurs with this filing.

Because GHL's request complies the requirements of 49 C.F.R. § 1152.29, and CSXT is willing to negotiate with GHL for trail use, a NITU will be issued to GHL. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, CSXT may fully abandon the Line, subject to any outstanding conditions. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on September 27, 2016, exempting the abandonment of the Line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit GHF to negotiate with CSXT for trail use of the subject Line for a period of 180 days commencing from the service date of this decision and notice until April 24, 2017. The abandonment is also subject to the conditions that the CSXT shall: (1)(a) retain its interest in and take no steps to alter the historic integrity of all historic properties, including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register until the Section 106 process of the NHPA, 54 U.S.C. § 306108, has been completed, (b) report back to OEA regarding any consultations with the SHPO and the public, and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition, and (2) in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, (a) immediately cease all work and notify OEA and the SHPO, pursuant to 36 C.F.R. § 800.13(b), and (b) consult with the SHPO, CSXT, the Eastern Band of Cherokee Indians, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (iii) the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in paragraph 3 above.
5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).
6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by April 24, 2017, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line, subject to any outstanding conditions.

8. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.